IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6439 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PAGLAM TRADERS

Versus

SALES TAX OFFICER

Appearance:

1. Special Civil Application No. 6439 of 1986

MR TANVISH BHATT with MR RD PATHAK for Petitioner No. 1

MR UR BHATT, AGP for Respondent No. 1-5

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 17/06/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this petition under Article 226 of the

Constitution, the petitioner had initially challenged the orders dated 27.10.1983, 18.10.1984 and 12.12.1985 (Annexure "A1" colly.) under Section 42(1) of the Gujarat Sales-tax Act, 1969 read with Section 9(2) of the Central Sales-tax Act, 1956.

2. By the impugned orders, the respondent authorities had extended the time limit for assessment for the relevant assessment years and also for completing the assessment upto 31.12.1986. The petitioner had also challenged the draft assessment orders passed by the concerned authorities in respect of those years. During pendency of this petition, final assessment orders have also been passed which are challenged by the amendment granted by this Court in the year 1987.

3. At the hearing of this petition, Mr Tanvish Bhatt for Mr RD Pathak, learned counsel for the petitioner has invited our attention to the judgment dated 4.12.1988 of this Court in Special Civil Application No. 1068 of 1983. It is submitted that apart from laying down the principles on the question of extension of limitation for completing the assessments, this Court held as under in para 9 of the said judgment :-

> "It may however be noticed that though no further proceedings were taken in the case of petitioner against order passed by the tribunal on 29.9.76 holding chicory roots as exempted by Entry 23 of Schedule I, the Sales Tax Tribunal took a difference view in the case of Brooke Bond, since amalgamated with Hindustan Lever Ltd. The issue has now been set at rest by the Supreme Court in appeal arising in those proceedings (Civil Appeal No. 8016/95) decided on 26.8.98. The Court has held that, "the essential character of chicory roots did not change by reason of the cutting, slicing and drying" and is exempt under Entry 23 of Schedule I of the Gujarat Sales Tax Act. Thus, on merit also, the sale of chicory roots by the petitioner does not fall for taxation being generally exempt under the State law."

4. Placing heavy reliance on the aforesaid observations, Mr Tanvish Bhatt for the petitioner has submitted that since the sale of chicory roots by the petitioner does not fall for taxation being generally exempt under the State law, the basis of assessment itself does not survive and, therefore, the impugned orders including the final orders of the assessment for the relevant years covered by this petition are required

to be set aside.

5. Mr UR Bhatt, learned AGP for the respondent authorities is not in a position to dispute the above submissions being made on behalf of the petitioner.

6. In view of the aforesaid undisputed position that the sale of chicory roots by the petitioner does not fall for taxation being generally exempt under the State law, we allow this petition and set aside the impugned orders of assessment as there is no dispute about the fact that the assessments in question pertain only to sale of chicory roots.

7. The petition is accordingly allowed. The impugned orders of assessment and consequential assessment orders, if any, for penalty and interest in respect of those years are set aside as, it is stated at the Bar, that all these orders pertain to the petitioner selling only chicory roots.

8. The petition accordingly stands disposed of. Rule is made absolute to the aforesaid extent with no order as to costs.

(M.S. Shah, J.)

(K.A. Puj, J.)

sundar/-